



Agenda Item Form

Agenda Date: MAY 11, 2004

Districts Affected: All

Dept. Head/Contact Information: Byron E. Johnson

Type of Agenda Item:

- | | | |
|--|---|--|
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Staffing Table Changes | <input type="checkbox"/> Board Appointments |
| <input type="checkbox"/> Tax Installment Agreements | <input type="checkbox"/> Tax Refunds | <input type="checkbox"/> Donations |
| <input checked="" type="checkbox"/> RFP/ BID/ Best Value Procurement | <input type="checkbox"/> Budget Transfer | <input type="checkbox"/> Item Placed by Citizen |
| <input type="checkbox"/> Application for Facility Use | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application |
| <input type="checkbox"/> Other _____ | | |

Funding Source:

- ☐ General Fund
- ☐ Grant (duration of funds: _____ Months)
- ☒ Other Source: REVENUE

Legal:

- ☒ Legal Review Required Attorney Assigned (please scroll down): None ☐ Approved ☐ Denied

Timeline Priority: ☒ High ☐ Medium ☐ Low # of days: _____

Why is this item necessary:

Pay Phone System - Revenue

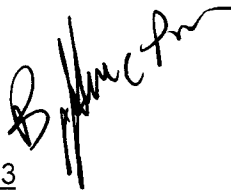
Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

Statutory or Citizen Concerns:

Departmental Concerns:

*
DATE: May 5, 2004
TO: Municipal Clerk
FROM: Byron E. Johnson, C.P.M.
Director of Purchasing x 4313
THRU: Aurora Wells
Interim Bid Clerk ext. 4038

CITY CLERK DEPARTMENT
2004 MAY 6 PM 1 27



Please place the following item on the **CONSENT** agenda for the Council Meeting of **MAY 11, 2004.**

Item should read as follows:

Bid No.	2003-228R	Pay Phone System For The City Of El Paso
Award to:	SBC	
	El Paso, TX	
Item (s):	All	
Amount:	\$104,547.00 (estimated year)	

Department:	Public Safety Technology
Funds available:	Revenue
Funding source:	Revenue
Total award:	\$418,148.00 (estimated 4 years)
District (s):	All

The Review Committee based on evaluation factors established for this RFP recommend award to SBC submitting the only proposal. See attached memorandum for explanation.

This is a four (4) year contract with the option to extend the contract for an additional two (2) years.

Additionally, authorization is requested for City staff to negotiate, City Attorney's Office to review, and the Mayor be authorized to execute any related contract documents and agreements necessary during the contract.

Contact person: Ray Heredia, Procurement Analyst at 915-541-4316.

AGENDA FOR: **MAY 11, 2004**

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PROJECT FORM

DATE: May 5, 2004

PROJECT: PAY PHONE SYSTEM FOR THE CITY OF EL PASO
RFP NO: 2003-228R DEPARTMENT: PUBLIC SAFETY TECHNOLOGY
BUDGET#: REVENUE
FUNDING SOURCE: REVENUE
RESPRESENTATIVE DISTRICT(S): ALL

VENDOR: SBC
EL PASO TX
ITEMS ALL
AMOUNT: \$104,547.00 ESTIMATED YR.

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PROPOSALS SOLICITED	<u>31</u>
PROPOSALS LOCALS	<u>12</u>
PROPOSALS RECEIVED	<u>01</u>
BIDS SVCS	<u>06</u>
"NO BIDS" RECEIVED	<u>02</u>
CURRENT TAXES PAID	___
OUT-OF-TOWN	___

TOTAL AWARD: \$418,148.00 EST. 4 YRS

FUNDS: AVAILABLE___ NOT AVAILABLE___ COMPTROLLER___

COUNCIL: APPROVED___ REJECTED___ CITY CLERK___

APPROVED:

COUNCIL MEETING OF MAY 11, 2004


BYRON E. JOHNSON
DIRECTOR OF PURCHASING

Consent Agenda for May 11, 2004

RFP NO.: 2003-228R Pay Phone System for the
City of El Paso

Award to: SBE
El Paso TX

Items: All

Amount: \$104,547.00 Estimated/Yr.

This is a four (4) year contract with the option to extend the contract
for an additional two (2) years.

Department(s): Public Safety Technology

District(s): All

Funds available: Revenue

Funding Source: Revenue

Amount: \$418,148.00



INFORMATION TECHNOLOGY

To: Ray Heredia
Procurement Analyst

From: Bonnie Guinn, Public Safety Technology Manager

Subject: RFP 2003-228R PAY PHONE SYSTEM FOR THE CITY OF EL PASO

Date: May 5, 2003

The proposal submitted by Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC") is the only response received for RFP 2003-228R Pay Phone System for the City of El Paso.

The RFP Evaluation Committee (Bonnie Guinn, Walt Townsend) reviewed the response from SBC and found it to be in compliance with all specifications noted in Sections A and B.

The committee therefore, recommends award of the RFP 2003-228R Pay Phone System for the City of El Paso to Southwestern Bell Telephone, L.P. d/b/a SBC Texas ("SBC"). Selection Committee recommends award to SBC.

I do not have a funding source for the proposal.

CITY OF EL PASO CITY BID TABULATION

RFP ITEM:	PAY PHONE SYSTEM FOR THE CITY OF EL PASO	RFP:	2003-228R
RFP DATE:	AUGUST 27, 2003	DEPARTMENT:	PUBLIC SAFETY TECHNOLOGY
SOUTHWESTERN BELL TELEPHONE, L.P. d/b/a SBC TEXAS ("SBC")		AUSTIN, TEXAS	
RFP SOLICITED:	31		
RFP RECEIVED:	1		
RFP LOCAL:	12		
NO BIDS:	2		

APPROVED BY:

DATE:

PAY PHONE SERVICE AGREEMENT

Agreement No.:

This Agreement is entered into on March 18, 2004 and is between City of El Paso ("Customer") and the Public Communications division of SBC Communications Inc., as defined in Section 8 below ("Provider"). Provider and Customer may hereafter be referred to jointly as the "Parties" and individually as "Party".

(1) **PAY PHONE SERVICE** - Customer hereby grants Provider the exclusive right to install, operate and maintain public pay telephones and associated equipment, and to provide pay phone service ("Services") at the following identified Location(s):

See Attached Rider

Unless otherwise specified in this Agreement, the term "Location" as used herein means all real property (including buildings and other structures) associated with and/or designated by a given street address. Provider and Customer shall, prior to the initial installation hereunder of Services at Customer's Locations, mutually agree upon the quantities and types of pay phone equipment, including peripheral equipment, to be installed and the specific placement thereof on the Customer's Locations. Pay phone equipment includes, but is not limited to, telephone sets, wiring, conduit, and any peripheral equipment such as enclosures, signage, bumper posts, shelves, and pedestals ("Equipment"). Provider shall bear all costs associated with installation and maintenance of the Equipment, and all Equipment shall remain the property of Provider. Provider reserves the right to reconfigure its Services at the Locations (e.g., no incoming calls, no coin acceptance, line concentration, changes in coin drop rate) at any time. Except as otherwise provided herein, after initial installation, any change in the quantities, types of Equipment, or specific placement thereof shall be by mutual agreement (which agreement shall not be unreasonably withheld) of the Parties. Customer agrees to pay Provider's standard relocation fee for any pay phone which, at the request of Customer, is relocated from its original placement at a Location.

(2) **TERM** - Provider shall have the right to provide Services for an Initial Term of four (4) years beginning on April 1, 2004 ("Effective Date") and expiring on March 31, 2008 ("Termination Date"). During the term of this Agreement, Customer shall not permit any other persons or entity to provide public pay telephone service at the Location(s). If Customer, in violation of this Agreement, allows another party to install one or more public pay telephones at the Locations where Provider Equipment is installed, then, in addition to its other remedies, Provider may remove its Equipment without liability or penalty and terminate this Agreement.

(3) **COMMISSION PAYMENTS** - Unless mutually agreed to otherwise by both Parties, Provider shall make payments on a regular basis to Customer during the initial contract term specified in Section (2) above, according to the Commission Schedule shown as Exhibit A, which is attached to and made part of this Agreement. Except to the extent as required by Texas law, Customer and Provider agree that the terms and conditions of this Agreement, all information regarding usage at and revenues earned by the pay telephones covered by this Agreement, and commissions paid to Customer are confidential and proprietary and shall not be disclosed to any third party.

(4) **CARRIER SELECTION** - Customer herein grants Provider the exclusive authority to act as Customer's agent for the purpose of selecting and/or changing the Preferred Interexchange Carrier (PIC) on the pay phones covered by this Agreement. Customer and Provider agree that Provider shall have the sole right to select and contract with, change, and/or restrict the local and long distance carriers (both intraLATA and interLATA) for all payphones covered by this Agreement.

(5) **REMOVAL OF PAY TELEPHONES** - Provider may, upon reasonable notice, remove any pay phone that has failed to generate sufficient revenue to meet such revenue requirements determined solely by Provider, or when a significant safety hazard to telephone users or Provider employees exists. In the event such removal

Proprietary Information

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PAY PHONE SERVICE AGREEMENT

renders a Location without a pay telephone (i.e., all pay phones are removed), this Agreement shall then terminate, with respect to that Location only. Provider shall also have the right to remove or relocate any Equipment that, in Provider's opinion, has been subjected to excessive theft or vandalism.

(6) USE OF PAY PHONES - The pay phones shall be installed for use by the public in making outgoing calls. Customer shall not use the pay phones covered by this Agreement in the conduct of its business or use the telephone number assigned thereto in its advertising or in any directory listing.

(7) OTHER RESPONSIBILITIES OF CUSTOMER - Customer shall also be responsible for:

- a) providing safe, unobstructed access to the pay phones covered by this Agreement, including any access to special purpose phones (e.g., drive-ups), and electrical power, at Customer's expense, for lighting necessary for the use of such pay phones.
- b) taking reasonable precautions to protect Provider's property from damage, vandalism, theft, or hazardous conditions and promptly reporting any service failures to Provider.
- c) prohibiting any person (other than employees, contractors, or agents of Provider) from connecting, disconnecting, moving, or altering any of Provider's Equipment.
- d) displaying all mutually agreeable signs and prohibiting the affixing or displaying of any advertising or other signs not authorized by Provider on the Equipment.
- e) allowing Provider personnel access to Customer's Locations during normal business hours for pay phone collection or installation, repair, or removal of Equipment.

(8) PROVIDER - Provider shall mean one or more of the following depending upon the state(s) in which space is provided hereunder for pay phone service: Pacific Bell Telephone Company, a California corporation, d/b/a SBC California; Nevada Bell Telephone Company, a Nevada corporation, d/b/a SBC Nevada; Southwestern Bell Telephone, L.P., a limited partnership under the laws of the state of Texas, providing pay phone service in the states of Texas, Missouri, Kansas, Arkansas, and Oklahoma, d/b/a SBC Southwest; Illinois Bell Telephone Company, an Illinois corporation, d/b/a SBC Illinois; Indiana Bell Telephone Company, Incorporated, an Indiana corporation, d/b/a SBC Indiana; Michigan Bell Telephone Company, a Michigan corporation, d/b/a SBC Michigan; The Ohio Bell Telephone Company, an Ohio corporation, d/b/a SBC Ohio; Wisconsin Bell, Inc., a Wisconsin corporation, d/b/a SBC Wisconsin; SNET America, Inc., a Connecticut corporation, and, where the state in which such space is provided is other than one of the foregoing, Ameritech Payphone Services, Inc., a Delaware corporation.

(9) LIABILITY AND INDEMNIFICATION - PROVIDER WILL PROVIDE PAYPHONE SERVICE PURSUANT TO ITS APPLICABLE TARIFFS, INCLUDING ANY LIMITS OF LIABILITY CONTAINED THEREIN, AND ANY APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS. CUSTOMER AGREES THAT IN NO EVENT WILL PROVIDER BE LIABLE FOR INTERRUPTION OF SERVICE OR ANY PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER RESULTING THEREFROM, INCLUDING LOST STATION REVENUES. WITHOUT LIMITING THE RESPONSIBILITIES OF THE PARTIES, PROVIDER SHALL BE RESPONSIBLE FOR ANY AND ALL PROVEN CLAIMS, INCLUDING CLAIMS OF NEGLIGENCE, WHICH ARISE DUE TO PROVIDER'S ACTS OR OMISSIONS, AND CUSTOMER SHALL BE RESPONSIBLE FOR ANY AND ALL PROVEN CLAIMS, INCLUDING CLAIMS OF NEGLIGENCE, WHICH ARISE DUE TO CUSTOMER'S ACTS OR OMISSIONS. CUSTOMER AGREES THAT NO LIABILITY SHALL ATTACH TO PROVIDER FOR ANY DEFACEMENT OR DAMAGE TO CUSTOMER'S PREMISES RESULTING FROM THE EXISTENCE OF PROVIDER'S EQUIPMENT OR THE INSTALLATION OR REMOVAL THEREOF, WHEN SUCH DEFACEMENT OR DAMAGE IS NOT THE RESULT OF THE NEGLIGENCE OF PROVIDER OR ITS EMPLOYEES.

Proprietary Information

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PAY PHONE SERVICE AGREEMENT

(11) **RENEWAL** – Unless either Party provides written notice of termination to the other via certified mail, return receipt requested, no fewer than thirty (30) days prior to the Termination Date of this Agreement, this Agreement will automatically renew for one (1) year (“First Renewal Term”). Furthermore, unless either Party provides written notice of termination to the other via certified mail, return receipt requested, no fewer than thirty (30) days prior to the end of the First Renewal Term of this Agreement, this Agreement will automatically renew for one (1) additional year (“Second Renewal Term”). After the Second Renewal Term, this Agreement shall terminate unless mutually agreed to otherwise in writing by both Parties.

(12) **SUCCESSORS AND ASSIGNS** – Either Party may, at any time, upon thirty (30) days prior written notice to the other Party, assign this Agreement or any portion hereof, to an affiliate or any third party. This Agreement shall benefit and/or be binding upon the successors, assigns, lessees, or beneficiaries of both Parties. At all times during the term of this Agreement, unless agreed otherwise in writing, Provider shall retain the right to directly negotiate with and directly pay any compensation hereunder to Customer. Customer shall provide Provider with notice of, not less than sixty (60) days prior to, any sale, lease, sublease, or other transfer or change of ownership of the above identified Locations to any third party. Upon request by Provider, Customer shall provide a copy of the sales/transfer agreement by which the property or control thereof was conveyed, or such other documentation sufficient to verify the sale/transfer.

(13) **PUBLIC NUISANCE/BUSINESS CLOSURE** - If, during the term of this Agreement, Provider removes its Equipment from any location at the request of Customer due to reasons of business closure or Provider removes said Equipment at the request of the Customer or as required by local ordinance due to public nuisance and then, during what would have otherwise been the remaining term of the Agreement another business opens at the same location in which business Customer has any ownership or financial interest or said public nuisance is abated, Provider may reinstall its Equipment for the balance of the Agreement. In any case, in the event Provider's Equipment is removed for any of the reasons stated in this provision, Customer will not allow any payphones other than Provider's to be installed at the Customer location(s) in question for the term of this Agreement.

(14) **NOTICES** - Any notice given under this Agreement shall be made in writing and sent via certified mail, return receipt requested, as follows:

FOR PROVIDER

SBC Public Communications
134 N.W. Sixth Street, Lower Level
Evansville, IN 47708
Attn.: Manager - Contract Admin.

FOR CUSTOMER

City of El Paso
2 Civic Center, 10th Floor
El Paso, TX 79901
Attn: Mayor

(15) **REGULATORY APPROVALS** - This Agreement is subject to the applicable provisions of Provider's tariffs directly or indirectly relating to Services, and to all other governmental orders, rules, regulations, or requisite approvals as may apply from time to time. In the event any regulatory, legislative, or judicial order, in the reasonable opinion of Provider, substantially modifies the rules, regulations, or statutes pertaining to the pay phone industry (including, but not limited to, the provision of operator services, the relevance and acceptance of calling cards, or the industry's financial arrangements) this Agreement shall, at Provider's option, be subject to termination or negotiated modification. Termination by Provider hereunder shall be upon thirty (30) days prior written notice.

(16) **GOVERNING LAW** - The validity of this Agreement, the construction and enforcement of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the state of Texas.

(17) **AUTHORITY** - Both Customer and Provider represents to the other that it has full authority to enter into and secure performance of this Agreement, and that the person signing this Agreement on behalf of the Party has been properly authorized to enter into this Agreement. Customer warrants that it has the right of possession to

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PAY PHONE SERVICE AGREEMENT

the Locations on which Provider shall install and maintain Services hereunder, and is otherwise duly authorized to grant permission to Provider to install and maintain such Service thereon. Customer further represents that it does not have any other agreement, oral or written, that conflicts with this Agreement. Each Party further acknowledges that it has read this Agreement, understands and accepts it, and agrees to be bound by all its terms and conditions.

(18) **SURVIVAL OF OBLIGATIONS** - Both Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

(19) **RIGHT TO CURE** - Either Party may terminate this Agreement immediately following written notice in the event the other Party is in default as to any of its material obligations hereunder, provided that (a) the defaulting Party has received a written notice containing a reasonably complete description of the default and (b) the defaulting Party has failed to cure the default within thirty (30) days of receiving such notice.

(20) **NON-WAIVER** - No course of dealing or failure of Provider to strictly enforce any term, right, obligation, or provision of this Agreement or to exercise any option provided hereunder shall be construed as a waiver of such provision.

(21) **FORCE MAJEURE** - Neither Party shall be liable for failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes which could not with reasonable diligence be controlled or prevented by the Party, and are otherwise referred to as Acts of God, including civil disobedience and labor disputes.

(22) **TERMINATION FOR CONVENIENCE** - Either Party may terminate this Agreement, in whole or in part, without cause at any time upon ninety (90) days prior written notice to the other Party.

(23) **ENTIRE AGREEMENT** - This Agreement, together with Exhibit A and any other attachments, represents the entire understanding between the Parties regarding Provider's Services on the identified Locations and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement may not be modified, amended, or waived except by a written instrument duly executed by both Parties.

PROVIDER

By _____
Name - Print or Type

Title - Print or Type

Signature

Date

Business Telephone

CUSTOMER

By _____
Name - Print or Type

Title - Print or Type

Signature

Date

Business Telephone

Federal Tax I.D./Soc. Sec. No. 46-6708652

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See Attached Rider

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(3) **COMMISSION PAYMENTS** - Unless mutually agreed to otherwise by both Parties, Provider shall make payments on a regular basis to Customer during the initial contract term specified in Section (2) above, according to the Commission Schedule shown as Exhibit A, which is attached to and made part of this Agreement. Except to the extent as required by Texas law, Customer and Provider agree that the terms and conditions of this Agreement, all information regarding usage at and revenues earned by the pay telephones covered by this Agreement, and commissions paid to Customer are confidential and proprietary and shall not be disclosed to any third party.

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- b) taking reasonable precautions to protect Provider's property from damage, vandalism, theft, or hazardous conditions and promptly reporting any service failures to Provider.
- c) prohibiting any person (other than employees, contractors, or agents of Provider) from connecting, disconnecting, moving, or altering any of Provider's Equipment.
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(9) **LIABILITY AND INDEMNIFICATION** - PROVIDER WILL PROVIDE PAYPHONE SERVICE PURSUANT TO ITS APPLICABLE TARIFFS, INCLUDING ANY LIMITS OF LIABILITY CONTAINED THEREIN, AND ANY APPLICABLE LOCAL, STATE, AND FEDERAL REGULATIONS. CUSTOMER AGREES THAT IN NO EVENT WILL PROVIDER BE LIABLE FOR INTERRUPTION OF SERVICE OR ANY PUNITIVE, EXEMPLARY, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER RESULTING THEREFROM, INCLUDING LOST STATION REVENUES. WITHOUT LIMITING THE RESPONSIBILITIES OF THE PARTIES, PROVIDER SHALL BE RESPONSIBLE FOR ANY AND ALL PROVEN CLAIMS, INCLUDING CLAIMS OF NEGLIGENCE, WHICH ARISE DUE TO PROVIDER'S ACTS OR OMISSIONS, AND CUSTOMER SHALL BE RESPONSIBLE FOR ANY AND ALL PROVEN CLAIMS, INCLUDING CLAIMS OF NEGLIGENCE, WHICH ARISE DUE TO CUSTOMER'S ACTS OR OMISSIONS. CUSTOMER AGREES THAT NO LIABILITY SHALL ATTACH TO PROVIDER FOR ANY DEFAACEMENT OR DAMAGE TO CUSTOMER'S PREMISES RESULTING FROM THE EXISTENCE OF PROVIDER'S EQUIPMENT OR THE INSTALLATION OR REMOVAL THEREOF, WHEN SUCH DEFAACEMENT OR DAMAGE IS NOT THE RESULT OF THE NEGLIGENCE OF PROVIDER OR ITS EMPLOYEES.

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(11) **SUCCESSORS AND ASSIGNS** – Either Party may, at any time, upon thirty (30) days prior written notice to the other Party, assign this Agreement or any portion hereof, to an affiliate or any third party. This Agreement shall benefit and/or be binding upon the successors, assigns, lessees, or beneficiaries of both Parties. At all times during the term of this Agreement, unless agreed otherwise in writing, Provider shall retain the right to directly negotiate with and directly pay any compensation hereunder to Customer. Customer shall provide Provider with notice of, not less than sixty (60) days prior to, any sale, lease, sublease, or other transfer or change of ownership of the above identified Locations to any third party. Upon request by Provider, Customer shall provide a copy of the sales/transfer agreement by which the property or control thereof was conveyed, or such other documentation sufficient to verify the sale/transfer.

(12) **PUBLIC NUISANCE/BUSINESS CLOSURE** - If, during the term of this Agreement, Provider removes its Equipment from any location at the request of Customer due to reasons of business closure or Provider removes said Equipment at the request of the Customer or as required by local ordinance due to public nuisance and then, during what would have otherwise been the remaining term of the Agreement another business opens at the same location in which business Customer has any ownership or financial interest or said public nuisance is abated, Provider may reinstall its Equipment for the balance of the Agreement. In any case, in the event Provider's Equipment is removed for any of the reasons stated in this provision, Customer will not allow any payphones other than Provider's to be installed at the Customer location(s) in question for the term of this Agreement.

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FOR PROVIDER

SBC Public Communications
134 N.W. Sixth Street, Lower Level
Evansville, IN 47708
Attn.: Manager - Contract Admin.

FOR CUSTOMER

City of El Paso
2 Civic Center, 10th Floor
El Paso, TX 79901
Attn: Mayor

(14) **REGULATORY APPROVALS** - This Agreement is subject to the applicable provisions of Provider's tariffs directly or indirectly relating to Services, and to all other governmental orders, rules, regulations, or requisite approvals as may apply from time to time. In the event any regulatory, legislative, or judicial order, in the reasonable opinion of Provider, substantially modifies the rules, regulations, or statutes pertaining to the pay phone industry (including, but not limited to, the provision of operator services, the relevance and acceptance of calling cards, or the industry's financial arrangements) this Agreement shall, at Provider's option, be subject to termination or negotiated modification. Termination by Provider hereunder shall be upon thirty (30) days prior written notice.

(15) **GOVERNING LAW** - The validity of this Agreement, the construction and enforcement of its terms and the interpretation of the rights and duties of the Parties shall be governed by the laws of the state of Texas.

(16) **AUTHORITY** - Both Customer and Provider represents to the other that it has full authority to enter into and secure performance of this Agreement, and that the person signing this Agreement on behalf of the Party has been properly authorized to enter into this Agreement. Customer warrants that it has the right of possession to

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SBC54000 07-09-03

PAY PHONE SERVICE AGREEMENT

the Locations on which Provider shall install and maintain Services hereunder, and is otherwise duly authorized to grant permission to Provider to install and maintain such Service thereon. Customer further represents that it does not have any other agreement, oral or written, that conflicts with this Agreement. Each Party further acknowledges that it has read this Agreement, understands and accepts it, and agrees to be bound by all its terms and conditions.

(17) **SURVIVAL OF OBLIGATIONS** - Both Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

(18) **RIGHT TO CURE** - Either Party may terminate this Agreement immediately following written notice in the event the other Party is in default as to any of its material obligations hereunder, provided that (a) the defaulting Party has received a written notice containing a reasonably complete description of the default and (b) the defaulting Party has failed to cure the default within thirty (30) days of receiving such notice.

(19) **NON-WAIVER** - No course of dealing or failure of Provider to strictly enforce any term, right, obligation, or provision of this Agreement or to exercise any option provided hereunder shall be construed as a waiver of such provision.

(20) **FORCE MAJEURE** - Neither Party shall be liable for failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes which could not with reasonable diligence be controlled or prevented by the Party, and are otherwise referred to as Acts of God, including civil disobedience and labor disputes.

(21) **TERMINATION FOR CONVENIENCE** - Either Party may terminate this Agreement, in whole or in part, without cause, at any time upon ninety (90) days prior written notice to the other Party.

(22) **ENTIRE AGREEMENT** - This Agreement, together with Exhibit A and any other attachments, represents the entire understanding between the Parties regarding Provider's Services on the identified Locations and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement may not be modified, amended, or waived except by a written instrument duly executed by both Parties.

PROVIDER

By _____
Name - Print or Type

Title - Print or Type

Signature

Date

Business Telephone

CUSTOMER

By _____
Name - Print or Type

Title - Print or Type

Signature

Date

Business Telephone

Federal Tax I.D./Soc. Sec. No. 46-6708652

Proprietary Information

The information contained in this Agreement is not for use or disclosure outside Provider or Customer, except under written agreement by the Provider and Customer.

SBC54000 07-09-03



FORM: Custom
El Paso

Agreement No.

EXHIBIT A
PAY PHONE SERVICE AGREEMENT
COMMISSION SCHEDULE
VARIABLE COMPENSATION WITH PROFIT SHARING

COMPENSATION – Provider shall pay on a regular basis to Customer for the period described in Section 2, a variable percentage of (i) the total gross revenue collected on all coin paid local exchange and IntraLATA calls, and (ii) the total gross billed revenue earned on all non-coin paid local exchange and IntraLATA calls (calling card, collect and third party, but excluding 1-800, toll-free, and access code calls and other calls made to other carriers for the purpose of further carriage of the call) carried by Provider and handled by Provider's operator services, and placed from each individual Provider pay phone covered by this Agreement. The rate for coin paid and non-coin paid local exchange and IntraLATA calls will be determined by the schedule below:

**DAILY AVERAGE LOCAL COIN AND
NON-COIN INTRALATA REVENUE**

COMPENSATION RATE

Less than \$2.00

None

\$2.00 – and Above

35%

In addition to the above compensation, Provider will also pay, on a quarterly basis four (4) months in arrears, ten percent (10%) of any per call compensation received by Provider (for 1-800, toll-free, and access code calls and other calls made to other carriers for the purpose of further carriage of the call), and identified and associated with the Provider pay phones covered by this Agreement.

By _____
PROVIDER

By _____
CUSTOMER

Date: _____

Date: _____

Proprietary Information

The information contained in this Agreement is not for use or disclosure outside Provider, Customer, their affiliated companies and their third party representatives, except under written Agreement by the contracting Parties.